

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

RE: ECF No. 18028

(Jointly Administered)

HIRAM PÉREZ SOTO,

Movant,

v.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Respondent.

**RESPONSE TO MOTION INFORMING THE COURT
FILED BY HIRAM PÉREZ SOTO**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Last Four Digits of Federal Tax ID: 3801) (Last Four Digits of Federal Tax ID: 3801) (Bankruptcy Case No. 19-BK-5223-LTS). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

The Commonwealth of Puerto Rico (the “Commonwealth” or “Debtor”) respectfully submits this response (the “Response”) to the *Motion Informing the Court* (the “Informative Motion”) filed by Mr. Hiram Pérez Soto (“Movant”) [ECF No. 18028] regarding the case captioned *Hiram Pérez Soto v. Hon. Maite D. Oronoz-Rodríguez, et al.*, Case No. 21-1404, pending before the United States Court of Appeals for the First Circuit (the “First Circuit”). In support of the Response, the Commonwealth respectfully states and prays as follows:²

BACKGROUND

1. On May 3, 2017, the Commonwealth, by and through the Oversight Board, as the Commonwealth’s representative pursuant to PROMESA section 315(b), filed a petition with the District Court under title III of PROMESA (the “Title III Case”).

2. On August 17, 2017, the Title III Court entered the *Order Amending Case Management Procedures*, which revised the *Notice, Case Management and Administrative Procedures* to implement a protocol (the “Lift Stay Protocol”) for filing motions for relief from the automatic stay set forth in Bankruptcy Code sections 362(a) and 922(a),³ as made applicable to the Title III Case by PROMESA section 301(a) (the “Title III Stay”) [ECF No. 17127-1].

3. On July 1, 2019, Movant filed a *Motion to Lift Automatic Stay* [ECF No. 7776].

² The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Commonwealth’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), has authorized the Commonwealth to file this response.

³ In a title III case, Bankruptcy Code section 922 extends the self-executing provisions of Bankruptcy Code section 362 to, among other things, actions against officers and inhabitants of the debtor to enforce claims against the debtor. See *Order Pursuant to PROMESA Section 301(a) and Bankruptcy Code Sections 105(a), 362(a), 365, and 922 Confirming (I) Application of the Automatic Stay to Government Officers, Agents, and Representatives, (II) Stay of Prepetition Lawsuits, and (III) Application of Contract Protections* [ECF No. 543] (“For the avoidance of doubt, the protections of Bankruptcy Code section 922(a)(1) with respect to officers and inhabitants of the Debtors, as set forth in paragraph 4(a) [of the Order], apply in all respects to the Debtors’ officers in both their official and personal capacities with respect to actions whereby parties pursuing such actions seek to enforce claims against any of the Debtors.”).

4. On August 22, 2019, the Title III Court entered the *Memorandum Order Granting in Part and Denying in Part Hiram Pérez Soto's Motion for Relief from Stay* (Docket Entry No. 7776) [ECF No. 8521] (the "Lift Stay Order"), modifying the Title III Stay with respect to the prepetition case captioned *Pérez-Soto v. Oronoz, et al.*, Civil Case No. 19-1266 (CCC) (the "First Litigation"), pending before the United States District Court for the District of Puerto Rico (the "District Court").

5. On October 8, 2019, the First Litigation and the case captioned *Hiram Pérez Soto v. Ramírez Nazario, et al.*, Case No. 19-1774 (JAG) (the "Second Litigation" and together with the First Litigation, the "Litigations"), were consolidated pursuant to an order of the District Court.

6. On October 21, 2019, Movant filed the *Motion Informing the Honorable Court* [ECF No. 8911] in the Title III Case requesting that the Lift Stay Order be extended to the Second Litigation to allow the Litigations to proceed to judgment.

7. On October 29, 2019, Movant and the Commonwealth entered into that certain *Stipulation Modifying the Automatic Stay Between the Commonwealth of Puerto Rico and Hiram Pérez Soto* (the "2019 Stipulation") [ECF No. 9095-1] to modify the Title III Stay to allow the Second Litigation to proceed to final judgment.

8. On November 4, 2019, the Court entered an order approving the 2019 Stipulation [ECF No. 9097].

9. On April 29, 2021, the District Court entered an order granting a motion to dismiss the Litigations [Civil Case No. 19-01266, ECF No. 79].

10. On May 4, 2021, Movant filed a *Notice of Appeal* in the District Court [Civil Case No. 19-01266, ECF No. 80], commencing the appeal captioned *Hiram Pérez Soto v. Hon. Maite*

D. Oronoz-Rodríguez, et al., Case No. 21-1404 (the “Appeal”), currently pending before the United States Court of Appeals for the First Circuit.

11. On September 3, 2021, Movant filed the Informative Motion.

RESPONSE

12. Movant seeks clarification that the modifications to the Title III Stay pursuant to the 2019 Stipulation and the Lift Stay Order allowing the Litigations to proceed to judgment are also applicable to the Appeal. To consensually resolve the request in the Informative Motion, the Commonwealth proposed to Movant a stipulation to further modify the Title III Stay to allow the Appeal to proceed to judgment. Specifically, the proposed stipulation provided the following:

- (a) The Title III Stay is hereby modified solely to the limited extent necessary to (i) allow the Appeal to proceed to final judgment before the First Circuit, and (ii) allow Movant to pursue execution and enforcement of any non-monetary relief that does not entail the disbursement of funds belonging to the Commonwealth or any other Title III debtor for the implementation, enforcement, and/or execution of such non-monetary relief; provided, however, the Title III Stay shall continue to apply in all other respects to the Appeal, including, but not limited to, the execution and enforcement of any judgment and for any claims for money damages or any other relief that entails the disbursement of funds by the Commonwealth or any other Title III debtor, and provisional remedies against the Commonwealth or any other Title III debtor.
- (b) Notwithstanding the foregoing, payment by the Commonwealth or another Title III debtor of any de minimis incidental costs associated with the implementation, enforcement, and/or execution of non-monetary relief shall not be considered “the disbursement of funds” for purposes of this Stipulation. Should Movant seek the implementation, enforcement, and/or execution of the non-monetary relief that the Commonwealth believes would require a disbursement of funds of the Commonwealth or another Title III Debtor, the Commonwealth shall serve promptly upon Movant written notice (a “Notice”) identifying the non-monetary relief and providing a brief summary of its position. The Notice shall include a certification that the Commonwealth believes in good faith that implementation, enforcement, and/or execution of the non-monetary relief in question will in fact require the disbursement of

funds belonging to the Commonwealth or any other Title III debtor. In the event that the Commonwealth sends Movant a Notice, the parties hereto agree to confer in good faith to seek to resolve the issue and, failing a consensual resolution, Movant reserves the right to file a motion for further relief from the automatic stay in accordance with the Lift Stay Protocol. The Commonwealth reserves all rights and defenses with regards to such motion, if and when filed.

13. Notwithstanding the proposed stipulation provides the relief Movant requests on terms consistent with the Lift Stay Order and the 2019 Stipulation, Movant insists on seeking a Court order clarifying the terms of the 2019 Stipulation and the Lift Stay Order. Given the Commonwealth's consent to modify the Title III Stay on the terms above, it is not necessary for the Court to clarify the terms of the Lift Stay Order and the 2019 Stipulation. Accordingly, the Commonwealth requests the Court enter an order modifying the Title III Stay on the terms provided in Paragraph 12 above.

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CERTIFICATE OF SERVICE

We hereby certify that, on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

RESPECTFULLY SUBMITTED.

On this 17th day of September 2021.

DOMINGO EMANUELLI HERNÁNDEZ
Secretary of Justice

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